

Annapolis, Md., December 1st, 1904.

The Board of Public Works of Maryland met in the Executive Chamber in the City of Annapolis promptly at noon of this date.

Present: Hon. Edwin Warfield, Governor; Hon. Murray Vandiver Treasurer; Hon. Gordon T. Atkinson, Comptroller.

The Secretary of the Board read from the Baltimore Sun of December 1st, 1904, the advertisement for the sale of the State's interest in the Chesapeake and Ohio Canal. The Governor announced that two sealed bids only had been submitted.

Dr. Atkinson, Comptroller, moved that the time having arrived for the opening of the bids as advertised, the bids be opened publicly and examined. Seconded by the Treasurer. Carried.

The bids were thereupon publicly opened by the Governor and read as follows:

Baltimore, Md., November 29th, 1904.

To the Honorable,

The Board of Public Works,

Executive Department,

Annapolis, Maryland.

Gentlemen:- In accordance with your published notice that sealed proposals are invited for the purchase of the entire interest of the State of Maryland in the Chesapeake and Ohio Canal Company and all its properties and works of every description, as mortgagee creditor or stockholder. I hereby offer to purchase the said entire interest of the State of Maryland, subject to the legal operation and effect of any and all judgments and claims duly proven and certified under the Act of 1896, Chapter 136 1/2 at and for the price of one hundred and fifty one thousand dollars (\$151,000) to be paid in the bonds or registered debt of this State at par as required by section 3 of Article XII of the Constitution within 60 days from the acceptance of this bid.

As requested by your published notice, I transmit here within a certified check in the sum of twenty five thousand (\$25,000) as a guaranty of the prompt payment of the purchase price, in accordance with the terms of sale.

Respectfully,

J. E. Wheelwright.

Baltimore, Md., Nov. 29th, 1904..

To the Honorable,

The Board of Public Works of the State of Maryland,

Referring to the published notice of the Board of Public Works of the State of Maryland dated September 26th, 1904, inviting sealed proposals for the purchase of the entire interest of the State of Maryland in the Chesapeake and Ohio Canal Company and all its properties and works of every description as either mortgagee, creditor or stockholder, the undersigned hereby proposed to purchase said interest of the State of Maryland as set out in said notice and upon the terms and conditions therein contained, and to pay therefor the sum of \$155,000 payable in the bonds or registered debt of the State of Maryland, taken at par within 60 from the acceptance of this bid.

Accompanying this bid there is handed you a certified check in the sum of \$25,000 required by the terms of the above mentioned notice as a guaranty of the prompt payment of the purchase price in accordance with the terms of sale.

Very respectfully,

F. S. Landstreet.

Each of these bids were accompanied as required by certified check for \$25,000. On motion of Comptroller Atkinson, the bids and checks were placed in the hands of the State Treasurer for custody until the Board should act upon the matter.

Mr. Benj. Richmond, the Attorney for Mr. Landstreet, asked permission to explain that gentleman's bid, which the Board accorded him. He stated that although the bid is made in the name of Mr. Landstreet, who is the Vice President of the Western Maryland Railroad Company, Mr. Landstreet is really acting for that Company and the only reason the ~~bid~~ ^{bid} is made in his name and not in that of that the Western Maryland Railroad Company is that there might be some question as to the power of this Company to make such a bid, while there can be none as to the power of Mr. Landstreet to do so. Mr. Richmond asked on behalf of his client that prompt action be taken by the Board and the matter disposed of as every day's delay means a great deal to those who are seeking to acquire the property.

On motion of the Comptroller, seconded by the Treasurer, it

was decided that the final decision of the Board as to the acceptance or rejection of these bids be made on Wednesday, December 14th, at two o'clock, P. M., when the Board will meet in the Executive Office in Annapolis to take up the matter for final action and that the Secretary notify each member of the Board in advance of the meeting.

The following letter from Alexander Cutino, State Wharfinger, was submitted and read.

Baltimore, November 29, 1904.

Hon. Edwin Warfield,
Governor of Maryland,
Your Excellency:-

I have rented 200 feet of wharf front at O'Donnell's Wharf, commonly called Frederick Street Dock, to the United Supply Company at \$200 per month, payable in advance, subject to your Excellency's approval, for one year.

This portion of the wharf has not yielded any revenue to the State since the fire, under the present circumstances of that portion of the wharf, I consider it good revenue for the State, and should the City buy the State's property, this portion of the wharf will not with the present plan for the improvement, at least for two years to come.

I am,

Your most obedient servant,

A. Cutino, State Wharfinger.

On motion of the Treasurer, seconded by the Comptroller, the Board resolved that it would not be wise to rent the property referred to by Mr. Cutino for more than a month at a time unless with the condition that the tenant will vacate whenever he shall be required to do so by the City, if the latter becomes the purchaser; and that Mr. Cutino be instructed to rent the property only on these conditions.

On motion of the Comptroller, seconded by the Treasurer, it was decided that the Board would meet at the office of the Governor in the Fidelity Building, Baltimore, on Tuesday morning, next, December 6th, to visit the State Tobacco Warehouse and Dock property in Baltimore, and for a conference with the members of the Burnt District Commission of that City regarding the purchase of that

or manner to the State of Maryland for my services in securing for the State a more substantial offer for its interests than already submitted to your body for this Canal, and to show my good faith in the matter you might insert in any clause or condition of sale that the purchaser will either keep it open and run it as a canal or build a new trunk line upon the road bed, and said trunk line to be independent of any now existing railroad coming into the State of Maryland. I do not wish to be understood as the purchaser that I have in mind to be understood as opposing the Wabash interests, but will agree to facilitate if they are sincere and only want it for rights of way purposes to allow them such rights of way or to cross the bed of the Canal.

I ask your Honorable Board's indulgence,

Very respectfully yours,

M. C. Mengis.

December 14th, 1904.

After which Mr. Mengis personally asked for delay in acting upon the bids now before the board on the ground that he could assure the Board that he would be prepared very shortly to submit a larger bid for the property than either of those submitted on December 1st, 1904.

Mr. C. K. Lord stated that he appeared in the interest of Mr. J. H. Wheelwright one of the bidders, who in turn represents the Consolidation Coal Company and the Coal Towage Company both of which are desirous of keeping the Canal open and operate the same as a water way. In reply to questions he stated that his client intended so far as possible to keep the Canal open as a water way, should he be the successful bidder, but that he (Mr. Lord) could not positively assure the Board that the Canal would be so maintained and operated under any and all circumstances. He further stated in reply to a question from Treasurer Vandiver that so far as he knew there was no connection or collusion whatever between the bids of Mr. Landstreet and Mr. Wheelwright.

Mr. F. S. Landstreet stated that neither he nor the Western Maryland Rail Road Company which he represented in this matter had any intention whatever of acquiring the corpus of the Canal which would be of no use to them; that they wanted the State's interests

in order to use the rights so acquired as (a club) in their litigation with the B. & O. R. R. Co., and for nothing else that to be of any value to them those rights must be acquired at once.

No other persons desiring to be heard the Board went into executive session after which Mr. Landstreet was recalled and further questioned as to whether he and those whom he represented had considered that should the corpus ~~of the~~ of the Canal eventually passed to them, the entire property would be forever free; under the terms of the charter of the Canal from any taxation whatever. He replied that he ^{was} perfectly aware of that fact, but that such an apparent advantage would be of no use to them whatever, that they did not desire to use the Canal bed their road being already built with the exception of about eight miles at a minimum of more than fourteen feet above the level of the tow-path of the canal and that those eight miles were waiting the acquisition of the State's interest before arranging for the crossing of the Canal bed at right angles in places where it was necessary to do so. Mr. Landstreet further stated that his attorney had informed him that there was no possible way by which a railroad could be located on the canal property and operated as such under the provisions of the original charter, and that he and his associates were perfectly willing to forego any claim to exemption from taxation on such grounds and to execute such papers preventing them from claiming such exemption as might be prepared by the attorney general, that what they wanted was the State's interest, to use as above stated as "a club" to expedite the completion of their road, and for that purpose alone. The Board decided, on motion of the Treasurer, seconded by the Comptroller, to defer further action on the bids now before them until Thursday the 22nd, inst., at 2 p. m. The Treasurer filed objections to the acceptance of either bid. Ordered spread on the minutes.

On motion of the Comptroller, seconded by the Treasurer, the Board decided to execute a proxy for the voting of the 547 shares of stock of the Central Nation Bank of Frederick held by the State on the matter of the extension of the Bank's charters which expired on 1906 for a further period of twenty years in accordance with the National Banking Act.

On motion, the Board at 4:15 p. m., adjourned to meet on Thursday the 22nd, at 2 p. m.

The following objections to the Board accepting either of the two bids for the State's interest in the Chesapeake and Ohio Canal which were opened December 1st, 1904, were filed by Treasurer Vandiver and ordered spread upon the minutes of the Board of December 14th, 1904.

"I have very carefully considered the two bids made for the purchase of the State's interest in the Chesapeake and Ohio Canal Company. One being by J. H. Wheelwright for the sum of \$151,000 which it is proper to assume is on behalf of the Baltimore and Ohio Railroad Company. The other by F. S. Landstreet, who is said to bid on behalf of the Western Maryland Railroad Company, for the sum of \$155,000, and have reached the conclusion that it is not for the best interest of the State to accept either of the bids for the following reasons:

First. That the offer is far below the real value of the State's interest in the Chesapeake and Ohio Canal and it is therefore, to the advantage of the State to wait until some future time when the conditions of the sale shall be such as to enable the State to realize a greater amount for its holdings. Recalling the fact that former Board of Public Works had rejected offers of over \$400,000 for the State's interest, it is not to be supposed that our acceptance of a bid of \$155,000 would be considered wise or prudent.

Second. The control and management of the Canal Company has been by order of the Courts since October 1891 placed in the hands of trustees of the bond holders of 1844, and will so remain until 1896. It has been contended that the offer of the State's interest for sale at this time when the delivery of the corpus of the Canal could not be made by the State until 1906 precluded the possibility of a bid being made by any other than the two railroads - the Baltimore and Ohio and the Western Maryland - which run parallel to the Canal, therefore, that the necessary completion was lacking which would enable the State to receive the highest price.

Third. The conviction is forced upon me that the only method by which the State can hope to receive a fair price for its interest in the Canal is to wait until the expiration of the time (1906) when the bond holders of 1844 shall cease to control and the State

can be in a position to deliver the corpus to the purchaser. It is true that this will involve a resistance on the part of the State to any further extension of the order of the Courts, but there is good ground for believing the State will be successful in resisting further extension. The original decree of Judge Alvey as affirmed by the Court of Appeals and extended from time to time was simply upon the ground that the bond holders could make the Canal a successful, growing and paying concern. After thirteen years, the failure has been so utter and complete it cannot be that the Courts will grant further extension of time.

Fourth. If the Canal should be sold at public sale after the decree of the Court to the highest bidder then the State would unquestionably be in a very much better attitude than it would be if either of the present bids were accepted.

It may be claimed that at such a sale the State could not protect its own which is subordinate only to the Mortgage of 1878 and labor claims with the accrued interest on each, but if the property were sold and bought no more than the claims which have priority to the State's interest, even in that case, in my judgment, the State would be gainer by the rejection of the present bids.

Fifth. The charter of the Canal Company granted by Maryland, Virginia and the United States Government, is one of the broadest and most liberal that has ever been granted to a corporation save possibly the charter of the Baltimore and Ohio Railroad. It exempts to all the property and water rights of every description from taxation by the State of Maryland or by the government of the United States on that portion of the property lying within the District of Columbia. The charter is perpetual and it cannot be amended or modified. It was so granted because of the fact that it is a public highway, free to be used by any citizen of the United States who places a boat in the Canal by paying a fixed and uniform charge. If the State should sell its interest under the present bids and the Railroad succeed to all the rights it could be maintained for all times by such purchaser free from taxation of all its property, both State and County, which is directly contrary to the policy of the State since the adoption of the Constitution of 1852. Whereas, if the Canal shall be sold under the order of the Court and the State should not receive a dollar of the proceeds

of the sale all the property of the Company extending from the City of Cumberland to the District of Columbia would become subject to taxation for both State and County purposes, which right of taxation would be of much greater value to the people of the State than the offer now pending.

Sixth. The only suggestion of any weight that has been made as a reason why the Board of Public Works should sell the interest of the State in the Canal for such an insignificant sum of \$155,000 is that it would facilitate the construction of the Western Maryland Railroad between Hancock and Cumberland. All agree that the interest of the State will be promoted by the construction of that road if it is operated independently on parallel lines and under a charter subject to the control of the General Assembly of Maryland. With the view of facilitating the construction of that road, if it is operated the Board of Public Works granted it without compensation the right to enter upon and use the property of the Canal Company for the purpose of constructing seven bridges across the line of the Canal.

The General Assembly of Maryland at its last session passed an Act (Chapter 56 of 1904) giving the Western Maryland Railroad Company extraordinary powers to condemn such property of the Canal Company as would not interfere with its navigation both on its two path side and on its side, upon such plans and location as the railroad Company itself selected. This is the most ample and perfect provision that has ever been made for the encouragement of a new enterprise. At the time these privileges were granted it was with the vilest opposition of the trustees of the Canal Company; but they were granted freely by the Legislature and by the Board of Public Works, so that every facility has been given to the Western Maryland for the extension of its road. It should be added that the records of the Canal Company show that the same provisions was made by the Canal Company and by the Board of Public Works for the entry of the West Virginia Central (a part of the system of the Western Maryland) with Cumberland giving it the right to accupy valuable property of the Canal by condemnation. The refusal to sacrifice the State's interest in the Canal under the present bids will in no way delay or hamper the immediate construction of the Western Maryland Railroad to Cumberland.

The most that can be said is that it has adopted a line which will be more expensive than using the tow path of the Canal; but of that the present owners have perfect knowledge and made provision for when they purchased it. Therefore no public purpose can be promoted by the acceptance of this insignificant bid and the enterprise, in which all Maryland is interested will not be retarded in its rejection. What we will accomplish will be to secure for the tax payers of the State a reasonable price for their property. We must deal with the question with the same care as trustees as we would if the property belonged to us individually. The interests of the people of the State can best be subserved by the rejection of both bids.

Murray Vandiver.

